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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,450	06/05/2001	David E. Allport	ER1604.02US	6282

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DISCOVISION ASSOCIATES
INTELLECTUAL PROPERTY DEVELOPMENT
2355 MAIN STREET, SUITE 200
IRVINE, CA 92614

EXAMINER

NGUYEN, JIMMY H

ART UNIT	PAPER NUMBER
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2673

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DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,450

Applicant(s)

ALLPORT, DAVID E.

Examiner

Jimmy H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 17 and 71-82 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 72, 74, 76, 78, 80 and 82 is/are rejected.
- 7) ☒ Claim(s) 1, 71, 73, 75, 77, 79 and 81 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/8/2004 has been entered. Claims 1, 17 and 71-82 are currently pending in the application. An action on the RCE follows:

Claim Objections

2. Claim 1 is objected to under 37 CFR 1.75(a) because although this claim meets the requirement 112/2d, i.e., the metes and bounds are determinable, however, "a bio-metric component" on line 12, should be changed to -- a bio-metric input component--, and "the input component" on line 18 should be changed to -- said bio-metric input component--, so as to make these limitations consistent with the limitation on line 15.

3. Claim 17 is objected to under 37 CFR 1.75(a) because although this claim meets the requirement 112/2d, i.e., the metes and bounds are determinable, however, -- and -- should be inserted immediately before "a graphical display" on line 3,-- wherein said controller is placed in -- should be inserted immediately before "a system state for a first user" on line 9, and -- wherein said controller is placed in -- should be inserted immediately before "a system state for a second user" on line 14, because the system states are not physical elements of the controller.

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4. It is in the best interest of the patent community that applicant, in his/her normal review and/or rewriting of the claims, to take into consideration these editorial situations and make changes as necessary.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 17, 72, 74 and 80 are rejected under 35 U.S.C. 102(e) as being anticipated by Scott et al. (USPN: 6,484,260 B1), hereinafter Scott.

As per claim 17, the claimed invention reads on Scott as follows: Scott discloses a controller (a portable personal identification device 6, see figs. 1 and 3) comprising a bio-metric input component (a biometric sensor 11, fig. 1, col. 6, line 42) and a graphical display (a LCD 50, fig. 4A, col. 8, lines 19-20). Further, as noting in fig. 4A and at col. 10, lines 6-28, Scott teaches the controller (6) comprising smart cards 54, each storing fingerprint template of a user, so that each user can operate the controller (6) with his smart card, and a plurality of users can operate the same controller (6). Furthermore, as noting in fig. 8 and the corresponding description, Scott teaches how the controller (6) is placed in a state of accessing to host facility (corresponding to the claimed system state and the previous state of the controller by the first user, and the claimed system state and the previous state of the controller by the second user), upon a biometric input of each user. To the extent that, a first user uses a smart card (54), and

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provides a biometric input into a biometric input component (11), thereby placing the controller in a state of accessing to host facility (this state corresponds to the previous state), and then later, the first user does the same steps again to place the controller also in a state of accessing to host facility (this state corresponds to the current system state which is substantially the same or similar to the previous state). In other words, Scott implicitly discloses the limitations recited in the last 10 lines of claim 17. Accordingly, the elements in claim 17 are read in the reference.

Regarding to claims 72, 74 and 80, Scott teaches the biometric input component including a fingerprint sensor, a voice sensor, or any other type of biometric sensor (col. 1, last 2 lines).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 76, 78 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott.

Regarding to these claims, as discussed in the rejection to claims 72, 74 and 80 above, Scott teaches the biometric input component including a fingerprint sensor, a voice sensor, or any other type of biometric sensor (col. 1, last 2 lines). Scott does not expressly teach the biometric inputs being retinal scans recited in claim 76, signature based inputs recited in claim 78, or facial inputs recited in claim 82. However, Official Notice is taken that the biometric sensor for accepting the biometric input being retinal scan, signature based input, or facial input,

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is well known and expected in the art. It would have been obvious to substitute the biometric sensor for accepting the biometric input being retinal scan, signature based input, or facial input, for the biometric sensor of Scott because this would provide the verification or authentication of a user who can't provide a fingerprint or voice print.

Allowable Subject Matter

9. Claims 1, 71, 73, 75, 77, 79 and 81 would be allowable if rewritten to overcome the objection to independent claim 1 above, set forth in this Office action.

10. The following is a statement of reasons for the indication of allowable subject matter: the claimed invention is directed to a method for accessing a device. Independent claim 1 identifies the uniquely distinct feature, “providing access to the functionality ... said bio-metric input of the second user being entered after said bio-metric input of the first user, ... by the second user”, last 7 lines of claim 1. The closest arts, as discussed in the last Office Action dated 01/13/2004, Park (USPN: 5,990,803) in view of Merjanian (USPN: 5,920,642) and Applicant's Admitted Prior Art, in combination disclose a method for accessing functionality of consumer devices comprising the step of establishing a system state being the previous system state of the controller that was in effect at the end of a previous use of the controller by the user, either singularly or in combination, fail to anticipate or render the above underlined limitations obvious.

Response to Arguments

11. With respect to the drawing, it is noted applicant that the proposed drawing correction filed on 07/08/2003, including fig. 6 was disapproved by the examiner as indicated in the Office

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Action dated 09/24/2003. In order to include fig. 6 in the application, applicant should submit fig. 6 itself again.

12. It is noted applicant that the drawing objection, the rejection under 35 USC 112, first paragraph, and the rejection under 35 USC 103(a) in the last Office Action date 01/13/2004, are hereby withdrawn in view of the papers filed on 04/08/2004.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy H. Nguyen whose telephone number is (703) 306-5422. The examiner can normally be reached on Monday - Thursday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bipin Shalwala can be reached at (703) 305-4938.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

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JHN

June 23, 2004

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A handwritten signature in black ink, appearing to read 'JH Nguyen', with a horizontal line extending to the right.

Jimmy H. Nguyen

Examiner

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